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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,239	10/20/2000	Herbert Howell Waddell	IP-902	8560

7590 11/29/2004

ALBERT WAI-KIT CHAN
WORLD PLAZA, SUITE 604
141-07 20TH AVENUE
WHITESTONE, NY 11357

EXAMINER	
PEZZUTO, ROBERT ERIC	
ART UNIT	**PAPER NUMBER**
3671	

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/693,239	WADDELL, HERBERT HOWELL	
	Examiner	Art Unit	
	Robert E Pezzuto	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-9 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis '359. Davis discloses an apparatus capable of gathering, picking up and carrying materials (figures 1-4) comprising two grasping elements (shovels, as seen in figures 1-3) each having shafts (A,A') and a flexible coupling means C (Davis states on lines 40 and 41 that C is "made of malleable iron" and *Webster* defines "malleable" as being ***flexible***). Also, Davis shows the coupling means being moveable along the grasping means shafts (as seen between figures 1 and 2) and because the top portions of the Davis handles are rounded, they can inherently rotate about their shaft axis while the coupling means is located at this rounded portion. Further, Davis shows the diameter of the shafts to be between 0.5 and 3 inches and shows their length to be between two and six feet.

Claims 1, 8, 9, 11, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee '328. Lee discloses an apparatus for picking up and carrying materials (figures 1-3) comprising two grasping elements A which each have shafts 15 and a flexible coupling means (metal spring means 17) having a pair of loops (as seen in figure 3) which is slideable along the shafts, can allow the shafts to rotate about their axes and is clampable in desired positions.

Claims 1, 8, 9 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Laramie '663. Laramie discloses an apparatus for picking up and carrying materials (figures 1-7) comprising two grasping elements (12,14) which each have shafts (as seen in figure 1) and a flexible coupling means (being formed form "any resilient material...plastic, etc; column 3, lines 59-62) having a pair of loops (as seen in figure 3) which is slideable along the shafts, can allow the shafts to rotate about their axes and is clampable in desired positions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis '359 in view of Cox '484. Davis discloses the claimed device substantially as discussed above but fails to show the use of rakes. However, Cox teaches that it is well known to provide rakes in such a grasping configuration and to do so using a diverse hinge means rendering the claimed chain an art recognized equivalent and an obvious matter of choice of design. It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the device of Davis with the teachings of Cox in order to provide a grasping device having greater operational range (i.e., use for better grasping lawn debris, etc.).

In reference to applicant's arguments is the following:

Regarding the Davis reference, the term "malleable" and applicant's term "flexible": As mentioned in the Action, the term "malleable" as defined by *Webster* equates directly to the term "flexible". Further, because of the broad claim language employed by the applicant, "a flexible coupling means", and the lack of a point of reference, the coupling of Davis can be employed to anticipated a flexible coupling (for example as opposed to a "welded coupling", "a concrete coupling" or one made from a inherently brittle material; i.e., cast iron).

Regarding the Lee reference: the applicant's attorney goes to great lengths to discuss the applied forces to the bottom of the tools disclosed in Lee. Further, great amounts of discussion are given the "fulcrum" of; and as employed by, Lee. However, none of these items appear to be either claimed by the applicant or germane to the

claimed features/limitations being anticipated by Lee. Simply put, claim 1 only requires two grasping elements and a flexible coupling between the elements, which would allow the two elements to rotate. Lee clearly has two chopsticks 16 and a coupling 17 between them. The coupling is clearly flexible (as shown in figure 2, plane and phantom views) and since the coupling connecting means "wraps" around the shafts (at no specific point, as seen in figure 3, area of reference numerals 21 7 25) of the sticks, the shafts are capable of being turned within the coupling and about their axes.

Regarding the comments on page 6, paragraph 2 about both Davis and Lee anticipating the applicant's claimed device and therefore Davis anticipates Lee (asserting that Lee should be invalid). This statement is basically erroneous (in that applicant's device can be (and is being) claimed in such a broad manner as to be anticipated by more than one prior art reference) and has nothing to do with the issues at hand.

Regarding the arguments against the Laramie reference: The above response/comments to Lee apply.

Applicant's arguments filed September 20, 2004 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert E Pezzuto whose telephone number is (703) 308-1012. The examiner can normally be reached on 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on (703) 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert E Pezzuto
November 24, 2004